

**TAB 4**

**Orr Deposition**

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

ABIGAIL NOEL FISHER; and )  
RACHEL MULTER MICHALEWICZ, )  
Plaintiffs, )

VS. )

STATE OF TEXAS; UNIVERSITY )  
OF TEXAS AT AUSTIN; et al, )  
Defendants. )

Civil Action No.  
1:08-cv-00263-SS

ORAL DEPOSITION

OF

MICHAEL ORR

TAKEN OCTOBER 6, 2008

**AFFILIATED REPORTERS & VIDEO**

*Certified Shorthand Reporters & Videographers*

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(512) 478-2752 FAX (512) 478-2782 1-800-969-2752

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

ABIGAIL NOEL FISHER; and )  
RACHEL MULTER MICHALEWICZ )

Plaintiffs, )

v. )

Civil Action No.  
1:08-cv-00263-SS

STATE OF TEXAS; UNIVERSITY OF )  
TEXAS AT AUSTIN; et al, )

Defendants. )

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ORAL DEPOSITION OF  
MICHAEL ORR  
October 6, 2008

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ORAL DEPOSITION of MICHAEL ORR, produced as a witness at the instance of the Plaintiffs and duly sworn, was taken in the above-styled and numbered cause on October 6, 2008, from 1:03 p.m. to 1:59 p.m., before Tracie L. Chew, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand at the offices of University of Texas at Austin, Main Building, Suite 210, Austin, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

APPEARANCES

FOR THE PLAINTIFFS:

Mr. Thomas R. McCarthy  
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202/719-7000

FOR THE DEFENDANTS:

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ALSO PRESENT:

Mr. Leo Barnes  
Ms. Patricia C. "Patti" Ohlendorf  
Mr. Joseph D. Hughes

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EXHIBITS

NO. DESCRIPTION	PAGE
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(NO EXHIBITS WERE MARKED)

\* \* \* \* \*

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(1) University has undertaken in order to promote minority  
(2) enrollment?

(3) MS. KNEELAND: Object to the form.

(4) You can go ahead and answer.

(5) A. All of our outreach -- Well, I mean, it consists  
(6) of a variety of different things. It consists of visitation  
(7) to high schools. We visit hundreds of high schools around  
(8) the state every year, many of those visitations are multiple  
(9) times during the year. We also will promote and attend  
(10) college night programs around the state. We -- we will  
(11) facilitate trips to campus, visitation, whether it be  
(12) individuals that are just scheduling an opportunity to come  
(13) down, we'll put them in groups and we work with that. We  
(14) also, like I said earlier, facilitate visitations, trips,  
(15) whether it be high schools bringing a group of students to  
(16) campus and the activities that they're going to be involved  
(17) in when they get down here or ones where we are -- we're  
(18) more proactively inviting students to come down and visit.  
(19) We correspond with students throughout the year and then we  
(20) also in, I think, a large way what we do is we are customer  
(21) service agents of the University for the broad population of  
(22) individuals in the state.

(23) Q. (By Mr. McCarthy) Okay. Now, do you -- is one of  
(24) the initiatives within your jurisdiction so to speak this  
(25) minority -- I mean, I'm sorry, the Longhorn Opportunity

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(1) Scholars (sic) program?

(2) A. Well that's something -- the initiative that's  
(3) administered by the financial aid office, student -- Office  
(4) of Student Financial Services. We definitely are involved  
(5) in promoting that scholarship through correspondence and  
(6) we're definitely out promoting the scholarship opportunity,  
(7) sure.

(8) Q. And how does that program work?

(9) A. Basically the -- the University identified 70 high  
(10) schools throughout the state where there was a number of  
(11) allocated scholarships set aside for a student from that  
(12) high school and so, you know, the student will apply for  
(13) scholarships and we will award a certain number of  
(14) scholarships from someone from that high school is the basis  
(15) of it.

(16) Q. Okay. And what -- How do students qualify for  
(17) those scholarships?

(18) A. They would need to graduate from that high school  
(19) and be admitted to the University.

(20) Q. Okay. How were those particular high schools  
(21) designated to be a part of the program?

(22) A. Those high schools were looked at in a variety  
(23) of -- and this was a -- This came directly after the Hopwood  
(24) Decision in a reaction to that and we looked at a variety of  
(25) different things. We looked at socioeconomic status --

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(1) average socioeconomic status of the student within those  
(2) high schools, we looked at the population of  
(3) first-generation students at that high school, we looked at  
(4) the percentage of students who sent test scores to us from  
(5) those high schools, and obviously started with the full  
(6) breadth of high schools and worked our way down to 70 high  
(7) schools that would be the cohort that those scholarships  
(8) were represented under. And although I think the numbers  
(9) may actually be 69 now because one school folded into  
(10) another school, it's basically the same schools that it was.

(11) Q. Okay. And you said this started shortly after the  
(12) Hopwood Decision?

(13) A. In -- after '96, I believe, is when -- and I may  
(14) have that wrong when the exact scholarship started, but --

(15) Q. But around '96, '97, is that what you think?

(16) A. That's correct.

(17) Q. What are some of the other formal initiatives that  
(18) the University has taken?

(19) A. In terms of recruitment?

(20) Q. Uh-huh.

(21) A. Recruitment is a combination of visibility in the  
(22) market. One of the biggest initiatives that we took in that  
(23) same time frame was the process of beginning to open  
(24) outreach centers around the state. And so in -- you know,  
(25) the first office to open was the Houston admission center

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(1) and shortly following that we opened the Dallas center, we  
(2) opened the San Antonio office, and literally this year we've  
(3) opened up a Valley admission center. And so the idea is  
(4) that it would provide services for students regionally so  
(5) that they don't have to come to Austin to be able to do so  
(6) and to use it as a platform to have broader access for  
(7) students in their local area in their high schools.

(8) But, you know, recruitment is not a complex  
(9) thing. It's a combination of correspondence, visibility,  
(10) and engagement with students, visitations of those students,  
(11) and then backed by a strong customer service. And then  
(12) there's also obviously scholarship components to  
(13) recruitment, there are also elements of retention and  
(14) programming on campus and students being tied to that. And  
(15) so, you know, those are all, I think, aspects of recruitment  
(16) that we're involved in.

(17) Q. Let's talk about these outreach centers.

(18) A. Uh-huh.

(19) Q. What kind of services do they provide to the  
(20) students in those area?

(21) A. They provide information sessions on admissibility  
(22) within the centers, we will hold receptions at those  
(23) facilities from time to time. They are a -- basically a  
(24) home base for counseling staff. And so one of the  
(25) motivations for doing that was that when we were running all

4 (Pages 10 to 13)

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(1) of those services out of Austin, we were limited, number  
 (2) one, in terms of just staff availability. I mean, in this  
 (3) process we expanded the staff as well. So we were always  
 (4) limited by the number of staff and so it puts additional  
 (5) staff in a market to be committed 100 percent to those  
 (6) areas. The biggest part -- I think the biggest time  
 (7) consumer in terms of involvement that they play tends to be  
 (8) attending college night programs and also visiting high  
 (9) schools.

(10) Q. And can you describe what the college night  
 (11) programs are like?

(12) A. College night programs are a variety of different  
 (13) kind of college programs. There's an organization called  
 (14) TACRA (phonetic) which is admissions registrar organization  
 (15) that will put on college fairs for an entire week in a  
 (16) market, okay, and they will organize and work with the  
 (17) schools where, you know, there can be nine, twelve programs  
 (18) a day where they're taking place during the morning, the  
 (19) afternoon, maybe lunchtime, and they'll also hold evening  
 (20) programs. They can be a fair where a collection of tables  
 (21) that individuals are coming and exchanging ideas with you.  
 (22) When possible we tend to do presentations and that comes  
 (23) from just the level of attention that we draw and an ability  
 (24) to get out a single message to a lot of people.

(25) Q. When did the University first start opening these

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(1) outreach centers in other cities?

(2) A. The first one -- well, hold on, I'll tell you when  
 (3) we opened the first one because I have that written down --  
 (4) 1997 is when we opened -- hold on a second -- sorry, 2000,  
 (5) is when the Dallas center was opened, 2005 we opened the  
 (6) San Antonio.

(7) Q. How about the Houston center?

(8) A. It was opened in 2000, I think, I believe as  
 (9) well -- well '96 -- Houston was the first one that was  
 (10) opened, so I want to say that we opened that one '96, '97 --

(11) Q. Okay.

(12) A. -- 2000 we opened the Dallas center, 2005 we  
 (13) opened the San Antonio admission center, and then this year  
 (14) we opened the one in the Valley so that's '07 actually.

(15) Q. Okay. Can you tell me a little bit about the  
 (16) Presidential Achievement Scholarship program?

(17) A. Presidential Achievement Scholarship is -- it's a  
 (18) need-base scholarship, it's targeting -- it's not limited to  
 (19) LOS high schools and is a product of the financial aid  
 (20) office in terms of their packaging awards. Specific dollar  
 (21) amounts -- Do you have a specific question about it?

(22) Q. How do students qualify for those other than need?

(23) A. That's how they qualify, through need.

(24) Q. Okay. Could you tell me also about the Keep  
 (25) Texans in Texas Scholarship program?

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(1) A. That was a scholarship initiative that was created  
 (2) by Larry Burk in the financial aid office. The idea being  
 (3) was that there were -- there was concern that we were losing  
 (4) students to out of state and this gave the financial aid  
 (5) office the opportunity to be able to have a scholarship pool  
 (6) to be able to try to offset awards that students were  
 (7) getting from out-of-state offers to make the -- the -- you  
 (8) know, financially to make it more equitable and so that  
 (9) these students would be enticed to possibly stay in the  
 (10) State of Texas.

(11) Q. Okay. And what are the qualifications for that?

(12) A. Qualifications for that, the student had -- It's  
 (13) been some years since that was going, so it's been a while  
 (14) since I've looked at that. My memory on that was that a  
 (15) student had to have been offered a scholarship by an  
 (16) out-of-state student (sic) and then it was taken into  
 (17) consideration by the financial aid office. And so  
 (18) qualification was that the student had to have an admissions  
 (19) offer and an offer of scholarship from an out-of-state  
 (20) school and then financial aid would evaluate that student  
 (21) situation to see if they were eligible for the scholarship.

(22) Q. And about how long has that program been running?

(23) A. How long has it been running?

(24) Q. Yes, how long has it been running?

(25) A. This is -- I don't -- To be quite honest with you,

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(1) I don't know that that scholarship is still being used.

(2) Q. Okay.

(3) A. I mean, you need to check with somebody in  
 (4) financial aid, but this was maybe '98, maybe 2000 when that  
 (5) scholarship was proposed.

(6) Q. Okay. When was the -- When did the Presidential  
 (7) Achievement Scholarship begin?

(8) A. I don't know the exact starting date. Around that  
 (9) time. I mean, all these initiatives came up -- LOS, PAS  
 (10) were all post-Hopwood, so it started in '97, around then.

(11) Q. Would you say, like, late '90s is when many of  
 (12) these started?

(13) A. That's a good way to answer that question, yeah,  
 (14) late '90s.

(15) Q. What are -- what are the qualifications for the  
 (16) First Generation Scholarship?

(17) A. A student has to be first generation and need, I  
 (18) think -- I believe they have to be PELL eligible.

(19) Q. And did this -- did the First Generation  
 (20) Scholarship also begin in the late '90s?

(21) A. Yes.

(22) Q. Are all of these -- Well, let me back that up.

(23) Is the Longhorn Opportunity Scholarship  
 (24) designed to help increase minority enrollment?

(25) A. I think it's one of the goals.

5 (Pages 14 to 17)

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(1) Q. Would you say that increasing minority enrollment  
(2) is one of the goals of the Presidential Achievement  
(3) Scholarship?

(4) A. I believe that those scholarships are directed  
(5) towards students in need. So I think the main goal is to  
(6) try to facilitate the students who have low income. I think  
(7) in a residual way that these things promote a certain level  
(8) of diversity on our campus and also have a residual effect  
(9) of promoting minority enrollment.

(10) Q. Okay. Would you say the same about the First  
(11) Generation Scholarship program?

(12) A. Sure.

(13) Q. So the First Generation Scholarship program is  
(14) generally need-based, but does help promote minority  
(15) enrollment?

(16) MS. KNEELAND: Object to the form.

(17) You can answer.

(18) A. Well the Keep Texans in Texas initiative, as a  
(19) specific initiative I think its goal was to try to limit the  
(20) brain drain out of the state and the idea that we were  
(21) losing qualified students to out of state. And so I don't  
(22) know that I would make that statement about Keep Texas in  
(23) Texans (sic).

(24) Q. (By Mr. McCarthy) Okay. But the -- What about the  
(25) First Generation Scholarship program?

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(1) A. I would say yes.

(2) Q. Yes, it does increase minority enrollment?

(3) A. Well I think that, yes, that it -- I'm sorry,  
(4) you're asking PAS you said?

(5) Q. I'm asking you about the First Generation  
(6) Scholarship.

(7) A. First Generation Scholarship. I think it has the  
(8) same residual effect, yes.

(9) Q. Okay. Does the University keep statistics about  
(10) the performance of students in these scholarship programs?

(11) A. I'm sure they do.

(12) Q. Okay. Does the University evaluate the  
(13) performance of the scholarship programs themselves?

(14) A. In what way?

(15) Q. Well, you stated -- let's say with regard to the  
(16) Longhorn Opportunity Scholarship --

(17) A. Right.

(18) Q. -- I think you said that its primary goal is  
(19) need-based?

(20) A. That's true.

(21) Q. Okay. And then it has a sort of residual effect  
(22) of increasing minority enrollment?

(23) A. Well, I mean, I think that -- here's the thing  
(24) with all of these issues and that is that minorities are  
(25) just -- well, there's a disproportionate representation in

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(1) terms of low income equating to minority populations in the  
(2) State of Texas and the same is true for first generation.  
(3) So in that sense then, yes, I think there's a residual  
(4) benefit from promoting these initiatives which increases the  
(5) minority enrollment at the University -- or at least works  
(6) towards that end.

(7) Q. Does the University keep track of what extent  
(8) these scholarship programs increase minority enrollment?

(9) A. That -- I don't believe so --

(10) Q. Okay.

(11) A. -- because they're not -- and the main reason for  
(12) that is that they're not minority scholarships.

(13) Q. Does the University have any scholarship programs  
(14) that are directly targeted at minorities?

(15) A. We do not.

(16) Q. What other initiatives or methods does the  
(17) University undertake that have, as part of their goal, the  
(18) increase in minority enrollment?

(19) A. Well, I mean, I think that -- you know, and I  
(20) don't want to speak too broadly, but I think that all of the  
(21) outreach activities on campus events, invitational programs,  
(22) services are created in a way that is not only going to try  
(23) to help all students -- I mean, the argument is I think that  
(24) if you improve the quality of service for all students, that  
(25) that's going to float everybody's boat and that minority

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(1) students are no different than other students in that way,  
(2) that if you can provide a higher quality of service, if you  
(3) can have them represented within the applicant pool, that  
(4) the effect is going to be you will increase the level of  
(5) diversity in your freshman class.

(6) Q. Has the University ever considered -- Let me start  
(7) that again.

(8) Has the University ever considered and  
(9) rejected a proposal for increasing minority enrollment?

(10) A. Sure.

(11) Q. Could you give me an example?

(12) A. The National Hispanic Scholarship Fund approached  
(13) the University and wanted to create a working relationship  
(14) where the University would pony up some money for  
(15) scholarships, they would pony up money for scholarships to  
(16) specifically try to increase the Hispanic population on  
(17) campus and that was a proposal that we walked away from,  
(18) namely because it was race-specific and exclusitory and  
(19) excluded, you know, students based on race.

(20) Q. Are you aware of any other similar -- Well, I  
(21) shouldn't say similar. Are you aware of any other proposals  
(22) to increase minority enrollment that the University  
(23) rejected?

(24) A. Well, I mean, I think that there's a tremendous  
(25) amount of discussion that we have internally within the

6 (Pages 18 to 21)



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(1) recruitment office and staff and oftentimes a variety of  
 (2) ideas have come up and I'd say that the ones that tend to be  
 (3) rejected are the ones that are race-exclusive. And so  
 (4) whether that -- you know, to give you a specific example of  
 (5) what that proposal was, I'd have to think a little bit about  
 (6) and go back over time and look at each one of those, but the  
 (7) reoccurring thing tends to be if it's race-specific, you  
 (8) know, or exclusitory, it's going to exclude some population,  
 (9) it's something that generally gets rejected. So --

(10) Q. Okay. Other than the formal programs and  
 (11) initiatives and scholarship we've discussed, are there other  
 (12) formal means by which the University increases minority  
 (13) enrollment?

(14) MS. KNEELAND: Objection; form.

(15) You can answer.

(16) A. Other ways -- Can you restate the question?

(17) Q. (By Mr. McCarthy) Sure. Other than the  
 (18) initiatives we discussed --

(19) A. Right.

(20) Q. -- are there additional initiatives that the -- in  
 (21) which the University engages that it increase minority  
 (22) enrollment?

(23) MS. KNEELAND: Same objection.

(24) A. I believe that -- you know, my belief is the best  
 (25) recruitment strategy you could ever have is send back happy

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(1) applicants and happy students, satisfied, and students who  
 (2) have graduated and enjoyed their experience. So in many  
 (3) ways I think that the University is involved in so many  
 (4) different activities to try to increase the quality of the  
 (5) undergraduate experience for all students that you could  
 (6) argue that all of those activities are bound up in the idea  
 (7) of trying to increase the enrollment at the University in  
 (8) terms of all diversity that exists.

(9) There are other programming. We have an  
 (10) Honors Colloquium that we have every year where we invite  
 (11) many, many students. We have a cohort of maybe 5 to 600  
 (12) students that will come to UT over the summer for a  
 (13) three-day period. I don't know if that's been discussed in  
 (14) this process, but another example of an activity that we're  
 (15) involved in.

(16) Q. (By Mr. McCarthy) What's the name of that  
 (17) activity?

(18) A. The Honors Colloquium.

(19) Q. The Honors Colloquium?

(20) A. Uh-huh.

(21) Q. Okay.

(22) A. The University is also involved in -- has outreach  
 (23) centers around the state that is working with younger-age  
 (24) students, eighth graders, to try to increase the pipeline  
 (25) of -- of these students in terms of test-taking and being

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(1) successful in high school that I think its goal is to  
 (2) increase the level of diversity on our campus. You know, I  
 (3) don't know that I've spelled out every single activity that  
 (4) we get involved in, but if you boil it down, all of these,  
 (5) under whatever name you're going to find them, at least out  
 (6) of the Office of Admissions, they tend to be an outreach  
 (7) program where we're visiting students in the field or  
 (8) bringing students to campus or we're corresponding with a  
 (9) student in some level of regularity or we're counseling the  
 (10) student or their parents.

(11) So, you know, the majority of the  
 (12) University's activities, at least out of the admissions  
 (13) office, are bound up in that type of programming which has  
 (14) been under, you know, various names over the years. Some of  
 (15) these programs have gone through multiple name changes over  
 (16) time, but they basically come down to being the same kind of  
 (17) program.

(18) MR. McCARTHY: Can we take a break?

(19) THE REPORTER: Off the record, 1:36.

(20) (Recess)

(21) THE REPORTER: On the record, 1:44.

(22) Q. (By Mr. McCarthy) Mr. Orr, does the University  
 (23) monitor the efforts of other universities to increase  
 (24) minority enrollment?

(25) A. Do you mean the activities that are involved in or

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(1) the results?

(2) Q. Both, let's say activities first.

(3) A. Okay. Not -- Well, there are professional  
 (4) periodicals that are distributed that talk about the issues  
 (5) of recruitment in literature so in that sense we are very  
 (6) knowledgeable about what's being done nationally, things  
 (7) that people are doing. We tend to be closer to our  
 (8) competition in the state. So there are satellite admissions  
 (9) offices for the Texas A & M University in Houston and we are  
 (10) there as well, so antidotally we tend to be more familiar  
 (11) with what's going on at the ground locally, you know, and  
 (12) amongst our competition than we are maybe with what UCLA is  
 (13) doing because they're not necessarily a direct competition  
 (14) for us. In terms of the results of their activities, I have  
 (15) no way of knowing, you know, how they evaluate it or how  
 (16) they -- what the results of a particular activity were. To  
 (17) be sure, our competition has been dramatically increasing  
 (18) the number of their staff working in these areas and we  
 (19) have -- we have tried to increase our staff not necessarily  
 (20) directly because of that, but the marketplace is becoming  
 (21) more competitive and is requiring more bodies to be able to  
 (22) get the work done to cover the number of schools we want to  
 (23) cover. So in that sense we do.

(24) The University of Texas will -- will document  
 (25) our enrollment after the twelfth class day and I believe

7 (Pages 22 to 25)

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

ABIGAIL NOEL FISHER; and )  
RACHEL MULTER MICHALEWICZ )

Plaintiffs, )

v. )

Civil Action No.  
1:08-cv-00263-SS

STATE OF TEXAS; UNIVERSITY OF )  
TEXAS AT AUSTIN; et al, )

Defendants. )

REPORTER'S CERTIFICATE  
ORAL DEPOSITION OF MICHAEL ORR  
October 6, 2008

I, Tracie L. Chew, Certified Shorthand Reporter in and for the State of Texas, do hereby certify that, pursuant to the agreement of counsel, came on before me, on October 6, 2008, the following named person, MICHAEL ORR, who was duly sworn to testify to the truth and nothing but the truth touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath and his examination reduced to typewriting under my supervision; and this deposition is a true record of the testimony given by said witness.

I further certify that I am neither attorney, nor counsel for, nor related to, nor employed by any of the parties to the action in which this testimony is taken; and, further, that I am not a relative nor employee of any

1 attorney or counsel employed by the parties hereto or  
2 financially interested in the action.

3 I further certify that the deposition transcript was  
4 submitted on October 16th, 2008 to the witness or to the  
5 attorney for the witness for examination, signature and  
6 return to me by November 17th, 2008;

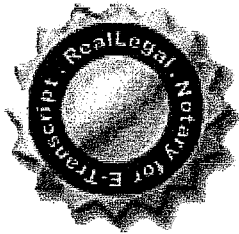
7 The original deposition ~~was~~ was not returned to the  
8 deposition officer on November 7, 2008 ;

9 If returned, the attached Changes and Signature page  
10 contains any changes and the reasons therefor;

11 If returned, the original deposition was delivered to  
12 Mr. Thomas R. McCarthy, Custodial Attorney;

13 That \$ 331.80 is the deposition officer's charges to  
14 the Plaintiffs for preparing the original deposition  
15 transcript and any copies of exhibits;

16 WITNESS MY HAND AND SEAL OF OFFICE, this 14th day of  
17 October, 2008.

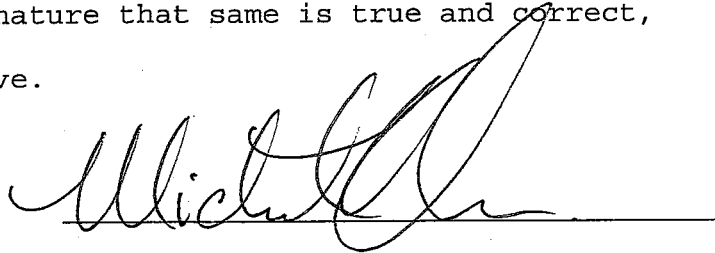


20 Tracie L. Chew  
21 TRACIE L. CHEW, CSR #6503  
22 Expiration: 12/31/2008  
23 DepoTexas Austin  
24 Firm Registration No. 17  
25 DepoTexas@aol.com  
Fax 512/478-2782

## CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON
8	14	Replace "a" w/ "an enrollment"	wrong word
11	14	Replace "from" w/ "to"	wrong word
14	14	Replace "TACRA" w/ "TACRAO"	wrong word
16	2	Replace "Burk" w/ "Burt"	wrong word
16	16	Replace "student" w/ "School"	wrong word
18	22	Replace "Texas" w/ "Texans"	wrong word
18	23	Replace "Texans" w/ "Texas"	wrong word.

I, MICHAEL ORR, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.



MICHAEL ORR

THE STATE OF Texas )

COUNTY OF Travis )

Before me, Leea Mechling, on this day  
 personally appeared MICHAEL ORR, known to me or proved to me  
 on the oath of \_\_\_\_\_ or through  
Known (description of identity card  
 or other document) to be the person whose name is subscribed  
 to the foregoing instrument and acknowledged to me that  
 he/she executed the same for the purpose and consideration  
 therein expressed.

Given under my hand and seal of office on this  
4th day of November, 2008.

Leea C Mechling

NOTARY PUBLIC IN AND FOR

THE STATE OF Texas

My Commission Expires: 8-28-2011

